

## Department of the Army, DoD

## § 536.50

by that state, commonwealth, territory, or the District of Columbia. See DA Pam 27-162, paragraph 2-41.

(d) *Federal Disaster Relief Act*. Within the United States a claim is not payable if it is for damage to, or loss of, property or for personal injury or death arising out of debris removal by a federal agency or employee in carrying out the provisions of the Federal Disaster Relief Act, 42 U.S.C. 5173. See DA Pam 27-162, paragraph 2-42.

(e) *Non-justiciability doctrine*. A claim is not payable under any subpart if it arises from activities that present a non-justiciable political question. See DA Pam 27-162, paragraph 2-43.

(f) *National Vaccine Act*. (42 U.S.C. 300aa-1 through 300aa-7). A claim is not payable under any subpart if it arises from the administration of a vaccine unless the conditions listed in the National Vaccine Injury Compensation Program (42 U.S.C. 300aa-9 through 300aa-19) have been met. See DA Pam 27-162, paragraph 2-17c(6)(a).

(g) *Defense Mapping Agency*. A claim is not payable under any subpart if it arises from inaccurate charting by the Defense Mapping Agency, 10 U.S.C. 456. See FTCH section II, B4s (Web address at paragraph (a) of this section).

(h) *Quiet Title Act*. Within the U.S., a claim is not payable if it falls under the Quiet Title Act 28 U.S.C. 2409a.

(i) *Defense Bases Act*. A claim arising outside the United States is not payable if it is covered by the Defense Bases Act, 42 U.S.C. 1651-1654.

NOTE TO § 536.46: See parallel discussion at DA Pam 27-162, paragraphs 2-40 through 2-43.

### § 536.47 Statute of limitations.

To be payable, a claim against the United States under any subpart, except §§ 536.114 through 536.116 (Claims arising overseas), must be filed no later than two years from the date of accrual as determined by federal law. The accrual date is the date on which the claimant is aware of the injury and its cause. The claimant is not required to know of the negligent or wrongful nature of the act or omission giving rise to the claim. The date of filing is the date of receipt by the appropriate federal agency, not the date of mailing. See also § 536.26(a) and parallel discussion at DA Pam 27-162, paragraph 2-44.

### § 536.48 Federal employee requirement.

To be payable, a claim under any subpart except subpart K of this part, §§ 536.153 through 536.157 (Claims involving tortfeasors other than non-appropriated fund employees), must be based on the acts or omissions of a member of the armed forces, a member of a foreign military force within the United States with which the United States has a reciprocal claims agreement, or a federal civilian employee. This does not include a contractor of the United States. Apply federal case law for interpretation. See parallel discussion at DA Pam 27-162, paragraph 2-46.

### § 536.49 Scope of employment requirement.

To be payable, a claim must be based on acts or omissions of a member of the armed forces, a member of a foreign military force within the United States with which the United States has a reciprocal claims agreement, or a federal employee acting within the scope of employment, except for subparts E, J, or subpart K of this part, §§ 536.153 through 536.157 (Claims involving tortfeasors other than non-appropriated fund employees). A claim arising from noncombat activities must be based on the armed service's official activities. Excluded are claims based on vicarious liability or the holder theory in which the owner of the vehicle is responsible for any injury or damage regardless of who the operator was. See parallel discussion at DA Pam 27-162, paragraph 2-46.

### § 536.50 Determination of damages—applicable law.

(a) *The Federal Tort Claims Act*. The whole law of the place where the incident giving rise to the claim occurred, including choice of law rules, is applicable. Therefore, the law of the place of injury or death does not necessarily apply. Where there is a conflict between local law and an express provision of the FTCA, the latter governs.

(b) *The Military Claims Act or National Guard Claims Act*. See subparts C and F of this part. The law set forth in § 536.80 applies only to claims accruing on or after September 1, 1995. The law of the

place of the incident giving rise to the claim will apply to claims arising in the United States, its commonwealths, territories and possessions prior to September 1, 1995. The general principles of U.S. tort law will apply to property damage or loss claims arising outside the United States prior to September 1, 1995. Established principles of general maritime law will apply to injury or death claims arising outside the United States prior to September 1, 1995. See *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375 (1970) and federal case law. Where general maritime law provides no guidance, the general principles of U.S. tort law will apply.

(c) *The Foreign Claims Act.* See subpart J of this part. The law of the place of occurrence applies to the resolution of claims. However, the law of damages set forth in § 536.139 will serve as a guide.

(d) *The Army Maritime Claims Settlement Act.* Maritime law applies.

(e) *Damages not payable.* Under all subparts, property loss or damage refers to actual tangible property. Accordingly, consequential damages, including, but not limited to bail, interest (prejudgment or otherwise), or court costs are not payable. Costs of preparing, filing, and pursuing a claim, including expert witness fees, are not payable. The payment of punitive damages, that is, damages in addition to general and special damages that are otherwise payable, is prohibited. See DA Pam 27-162, paragraphs 2-56 and 3-4b.

(f) *Source of attorney's fees.* Attorney's fees are taken from the settlement amount and not added thereto. They may not exceed 20 percent of the settlement amount under any subpart.

NOTE TO § 536.50: For further discussion see DA Pam 27-162, paragraph 2-51.

#### § 536.51 Collateral source rule.

Where permitted by applicable state or maritime law, damages recovered from collateral sources are payable under subparts D and H, but not under subparts C, E, F, or J of this part. For further discussion see DA Pam 27-162, paragraph 2-57.

#### § 536.52 Subrogation.

Subrogation is the substitution of one person in place of another with regard to a claim, demand or right. It should not be confused with a lien, which is an obligation of the claimant. Applicable state law should be researched to determine the distinction between subrogation and a lien. Subrogation claims are payable under subparts D and H, but not under subparts C, E, F or J of this part. For further discussion see DA Pam 27-162, paragraph 2-58.

#### § 536.53 Evaluation of claims—general rules and guidelines.

(a) Before claims personnel evaluate a claim:

(1) A claimant or claimant's legal representative will be furnished the opportunity to substantiate the claim by providing essential documentary evidence according to the claim's nature including, but not instead of, the following: Medical records and reports, witness statements, itemized bills and paid receipts, estimates, federal tax returns, W-2 forms or similar proof of loss of earnings, photographs, and reports of appraisals or investigation. If necessary, request permission, through the legal representative, to interview the claimant, the claimant's family, proposed witnesses and treating health care providers (HCPs). In a professional negligence claim, the claimant will submit an expert opinion when requested. State law concerning the requirement for an affidavit of merit should be cited.

(2) When the claimant or the legal representative fails to respond in a timely manner to informal demands for documentary evidence, interviews, or an independent medical examination (IME), make a written request. Such written request provides notice to the claimant that failure to provide substantiating evidence will result in an evaluation of the claim based only on information currently in the file. When, despite the government's request, there is insufficient information in the file to permit evaluation, the claim will be denied for failure to document it. Failure to submit to an IME or sign an authorization to use medical information protected by HIPAA, for